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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 579

UNITED STATES LINES OPERATIONS, INC.,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

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INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Jurisdiction	2
Statute involved	2
Decision of the court below	2
Question presented	2
Statement	2
Specification of errors to be urged	5
Reasons for granting the writ	5

Cases Cited.

United States v. *Esnault-Pelterie*, 299 U. S. 201, 57 Sup. Ct. 159	7
United States v. *Pyne*, 313 U. S. 127, 61 Sup. Ct. 895	7

Statutes Cited.

Act of February 13, 1925, Section 3(b), as amended by the Act of May 22, 1939, c. 140, 53 Stat. 752	2
Act of March 2, 1929 (Public—No. 952—70th Cong.), 45 Stat. 1508, amended April 19, 1930 (Public—No. 155—71st Cong.), 46 Stat. 225	2, 3

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays for the issuance of a writ of certiorari to review a judgment of the Court of Claims of the United States entered June 8, 1943, insofar as said judgment dismisses the petition of plaintiff below involving claim for compensation for sea transportation of so-called Gold Star Mothers and Widows to Europe and return in 1930. The judgment of the Court entered at the same time in the Government's favor on its counterclaim for rent of office space in 1932 has been paid and accepted by the Department of Justice, and there has been no further controversy with respect thereto since judgment was entered and paid.

Motion of plaintiff below for a new trial with respect to the Gold Star case was filed August 6, 1943, and was denied by the Court of Claims October 4, 1943 (R. 73).

Jurisdiction.

The Jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939, c. 140, 53 Stat. 752.

Statute Involved.

The Statute involved is the Act of March 2, 1929 (Public, No. 952, 70th Cong.), 45 Stat. 1508, amended April 19, 1930 (Public, No. 155, 71st Cong.), 46 Stat. 225.

Decision of the Court Below.

The opinion of the Court below has not been printed in the official reports. The Court made special findings of fact, conclusions of law, opinion and judgment with respect to the claim for compensation for sea transportation of the Gold Star Mothers and Widows. These are found in the Record on pages 24 to 73.

The order of the Court denying motion for a new trial with respect to the Gold Star case is found on page 73 of the transcript.

Question Presented.

Whether the Court of Claims may properly hold as a matter of law that the respondent, having entered into a specific contract with petitioner for the transportation of passengers at tariff rates, is entitled to certain discounts not mentioned in the contract, and not available to any passengers under the applicable tariff rates.

Statement.

On March 2, 1929, there was approved an Act of Congress to "enable the mothers and widows of the deceased soldiers,

sailors and marines of the American forces now interred in the cemeteries of Europe to make a pilgrimage to these cemeteries" (45 Stat. 1508). The act was amended April 19, 1930 (46 Stat. 225).

The Quartermaster General of the Army, under the authority of the Secretary of War, arranged for the pilgrimage authorized by the Act and negotiated with plaintiff for the sea transportation of the pilgrims from Hoboken to Europe and return on specially arranged schedules involving the operation of 17 sailings east-bound and a like number of sailings west-bound on specified sailing and arrival dates during the calendar year 1930. Due to limitation of two weeks for the tour in Europe certain schedules had to be and were changed and adjusted. These negotiations culminated in acceptance by the Quartermaster General of a proposal dated March 29, 1930, in which plaintiff agreed to "provide cabin accommodations in the number and on the vessels indicated on the attached list at tariff rates for the accommodations occupied east- and west-bound", for which payment was to be made by Government transportation order "to be issued when east- and west-bound tickets for each sailing are made up" by plaintiff's representatives and turned over to representative of the Quartermaster General (Findings 17 and 18, R. 43-48).

The tariff rates referred to in the proposal were published in a folder dated January 1, 1930, and quoted "off-season" rates effective east-bound July 16 to May 15, inclusive, and west-bound Oct. 1 to July 31 inclusive; and the summer, or "high" season, rates effective May 16 to July 15, and west-bound August 1 to September 30 inclusive. The "off-season" one-way rates were lower than the high season, and in addition, the folder provided that—"Round trip rates apply during 'off-season'—East-bound July 16 to May 15, inclusive; West-bound Oct. 1 to July 31 inclusive, Round trip rates for berths above minimum are made by deducting

12% from combined Eastbound and Westbound fares" (Court's Findings 25, R. 52).

The first two parties sailed eastbound in off-season May 7th and May 13th respectively, and returned westbound in off-season, May 29th and June 4th and 5th, respectively, these being the only two round-trips in "off season". The third to seventeenth parties traveled one-way in "off-season" and one-way in high season (Court's Finding 37, R. 66).

Petitioner's bills at full face one-way tariff fares for the particular season in which the sailing east- or west-bound occurred were "certified correct for the War Department, R. E. Shannon, Captain, Quartermaster Corps," and were paid by the Finance Officer of the War Department without question from May 7 to July 23, 1930, at full face amount of one way tariff rates eastbound and westbound. On July 23, 1930, the Finance Officer of the War Department sent plaintiff a written request that the per capita fare shown on vouchers submitted be corrected to a basis of 12 per cent discount in accordance with tariff, to which plaintiff immediately protested and refused to acquiesce in the requested change of its bills theretofore approved and paid or to change the basis of any of the future bills for the remaining pilgrimages (Court's Findings 31, 32, 33; R. 56-64).

The Finance Officer withheld settlement of plaintiff's bills for the sixteenth pilgrimage sailing eastbound August 27th and westbound September 18th until October 27, 1930, when a deduction was made representing 12% discount on combined one-way fares for the first two pilgrimages and also a deduction representing 12% of one-way portions of "off-season" fares on remaining pilgrimages (Court's Finding 37, R. 66).

Specifications of Errors To Be Urged.

The Court of Claims erred:

1. In holding that petitioner's 1930 tariff, which specifically cancelled all previous issues, was consistent with the round-trip one-way discount provision of the 1929 tariff.

2. In holding that under the applicable rate the respondent was entitled to a 12% discount on the one-way portion of fares for trips in off-season by those pilgrims who travelled one-way in off-season and one-way in high-season.

3. In holding that the petitioner was not entitled to recover the sum of $59,954.46 representing a deduction of 12 per cent of one-way off-season travel.

Reasons for Granting the Writ.

Petitioner's tariff rates for 1930 did not provide for any discount on one-way off-season travel where the other portion of the round trip was not in off-season.

It is respectfully submitted that the one-way discount formula effective in 1929 cannot be applied in 1930 where the 1930 tariff specifically revokes all provisions of the 1929 tariff.

The Court has also correctly found that the "tariff rates" referred to in the accepted proposal of March 29, 1930, were published in a folder dated January 1, 1930, which is in evidence and made a part of Finding 25 by reference thereto. The Court further finds that said tariff quoted off-season rates effective eastbound July 16 to May 15, inclusive, and westbound Oct. 1 to July 31 inclusive, and summer or "high season" rates effective eastbound May 16 to July 15 inclusive and westbound August 1 to September 30 inclusive; that the off-season rates set forth in the tariff

were lower than the high season rates; and that as to off-season rates the folder provided:

> "Round trip rates apply during 'off-season'—Eastbound July 16th to May 15th inclusive; Westbound Oct. 1st to July 31st inclusive. Round trip rate for berths above minimum is made by deducting 12% from Combined Eastbound and Westbound fares."

On the findings as to the agreement and applicable tariff it is submitted that under the language of the agreement and the applicable tariff a deduction of 12 per cent on one-way trips in "off-season" should not have been allowed, and that the Court of Claims had no basis for holding as a matter of law that a one-way discount provision effective in 1929 was applicable or effective under the agreement or the 1930 tariff.

The Court finds that the agreement was uniformly applied by petitioner and respondent as meaning tariff rates eastbound and tariff rates westbound, without any deduction of 12 per cent on any round-trip or one-way trip in "off-season" from May 7 to July 23, 1930, when respondent's Finance Officer requested petitioner to correct vouchers to a basis of 12 per cent discount in accordance with tariff.

Petitioner is no longer questioning the judgment of the Court of Claims that the respondent was entitled to the round-trip discount on combined one-way fares on the only two round-trips which were made both ways in "off-season." The writ of certiorari is directed to the sole issue of whether the respondent was entitled to the one-way discount taken by the respondent on those trips which were made one-way in off-season and where the other portion of the round-trip was not in "off-season."

Every finding of the Court of Claims leads inevitably to the ultimate facts shown in Finding 25 and in Minutes

174 and 175 of Meeting No. 24 on November 22, 1929 (shown in the latter part of Finding 26) that round-trip discount was applicable only to round-trips made in off-season, and that the provision of the minutes of Meeting No. 4 on March 28, 1929, offered "as a trial" a discount where "passenger travels one-way during off-season and one-way during the summer season" the reduction would be allowed on the off-season one-way fare, was not included in the 1930 tariff.

The conclusion of the Court that the discount taken by the respondent is consistent with the discount provision of the 1930 and the conference Agreement is absolutely devoid of any supported finding insofar as the discount taken related to one-way discounts on off-season travel and this Court has held in numerous cases that a judgment of the Court of Claims cannot be supported by that Court's statements or conclusions of law except upon adequate findings. *U. S.* v. *Esnault-Pelterie*, 299 U. S. 201, 206, 57 S. Ct. 159, 162; *U. S.* v. *Pyne*, 313 U. S. 127, 131, 61 S. Ct. 895.

The Court of Claims does not undertake in its opinion to show the basis of its conclusion that the one way discount is allowable. It refers to the agreement, the tariff and the passenger conference minutes and justifies as a conclusion of law, both the discount taken on round-trips, i. e. 12 per cent of the *combined one-way fares* on the only two round trips which were made in off-season, as well as the *one-way discount*, notwithstanding the finding shows that respondent's proposal containing offer of one-way discount in 1929 was rejected, was not renewed, and tariff for 1930 authorized only round-trip discounts where both directions of travel were in off-season.

Negotiations for the subject transportation to be performed in 1930 began with a letter from petitioner to the respondent in June 1929 in which plaintiff offered discount

of 10 per cent on one-way "off-season" travel, i. e. if the travel is one way in "off-season" and one way in high season a "10 percent deduction is applicable on one-half of the fare." To this proposal respondent replied that the Government was not then in position to make definite plans or arrangements for the necessary transportation; that definite plans could not be formulated until the size of the movement was known, which would be about November 15, 1929 (Court's Findings 4 and 5, R. 44).

That the one-way discount was not applicable in the 1930 tariff is demonstrated not only by the specific language of the tariff but by the minutes of the Trans-Atlantic Passenger Conference (of which respondent was a member). The minutes of meetings as filed in the Department of Commerce Shipping Board Bureau, and made a part of the Court's Finding 26 (R. 53-4) show that the conference, effective March 25, 1929 instituted, "as a trial" cabin round trip rates "with a reduction of 10% from the combined one-way fares for travel during" certain definitely named periods east-bound and west-bound; that if round trip ticket is issued at the outset and passenger travels one way during the "off-season" and one way during the summer season, the reduction of 10% would be allowed on the off-season one-way fare; that a line may advertise that the reduction will be allowed on the off-season one-way fare, even if the passenger travels one-way during the summer season; that the subject was to be reviewed at the meeting of the principals in October 1929.

The later passenger conference minutes (Minutes 174 and 175; Finding 26, R. 53-4) show that the subject of round-trip discount was considered at meeting held November 22, 1929, wherein it was provided that effective January 1, 1930, there was to be no reduction eastbound or westbound in the summer or high season. Specifically,

the minutes show that seasonal periods and rates applicable for cabin round trips would be as follows:

Off Season

12 percent off combined one-way rates

Westbound	*Eastbound*
October to July	July 16 to May 15

Summer Season

No reduction

Westbound	*Eastbound*
August to September	May 16 to July 15

It is therefore clear that the conclusion of law of the Court of Claims in its opinion that the Government was entitled to a discount on travel one-way in off-season where the travel in the other direction was in high-season is not supported by the findings. Such a conclusion is in direct conflict with the tariff provision which says "round-trip rates apply in off-season" and "round trip rates are made by deducting 12 per cent from combined Eastbound and Westbound fares." There is no authorization for a deduction of 12 per cent from a one-way off-season fare, especially as the one-way off-season fare as shown in the tariff is at a lower rate than the one-way high season fare. The Government received the benefit of the lower rate in off-season one-way fares under petitioner's bills and after those bills had been paid as rendered the Government then asserted an alleged claim to an additional favor of a 12 per cent discount off the already lower off-season rate.

In conclusion, it is respectfully submitted that the findings of the Court of Claims do not support the conclusions of law found by that court with respect to the alleged claim of discount on one way off-season travel where the

other portion of the round trip was not made in the off-season. The opinion of the Court and the conclusions of law contained therein are hopelessly in conflict with the findings of fact.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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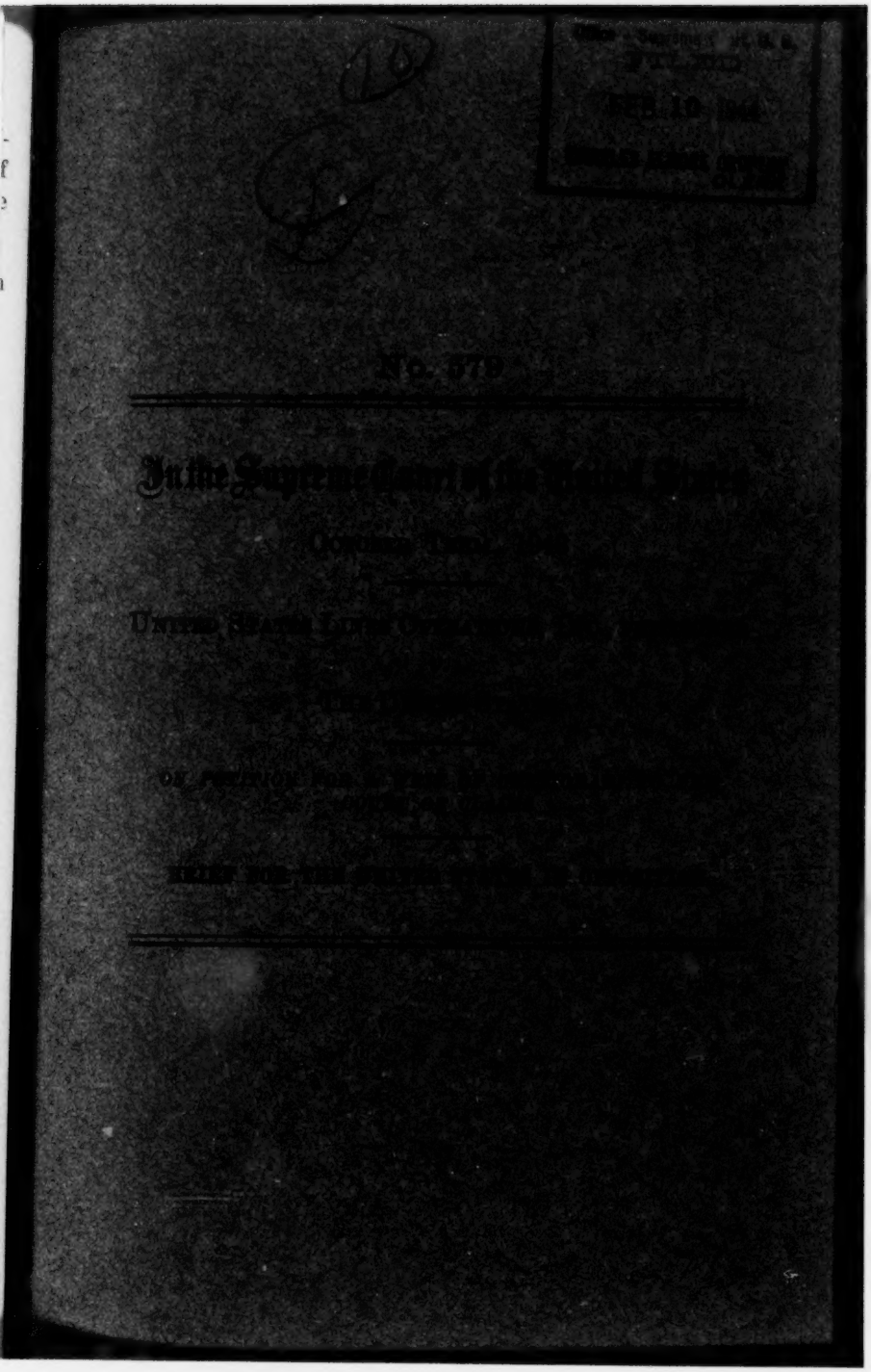

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	5
Conclusion	9

CITATIONS

Cases:

Atlantic Coast Line Railroad Co. v. *Atlantic Bridge Co.*, 57 F. (2d) 654 — 7

Botany Mills v. *United States*, 278 U. S. 282 — 9

Chicago & Northwestern Ry. Co. v. *Wilcox Co.*, 68 F. (2d) 883 — 7

Great Northern Railway v. *Merchants Elevator Company*, 259 U. S. 285 — 8

Hamilton v. *Insurance Company*, 136 U. S. 242 — 8

Klamath Indians v. *United States*, 296 U. S. 244 — 8

Union Wire Rope Corp. v. *A. T. & S. F. Ry.*, 66 F. (2d) 965 — 7

United States v. *Esnault-Pelterie*, 299 U. S. 201 — 8, 9

United States v. *Gulf Refining Co.*, 268 U. S. 542 — 7

United States v. *Pugh*, 99 U. S. 265 — 9

Statute:

Act of March 2, 1929 (45 Stat. 1508), as amended April 19, 1930 (46 Stat. 225) — 2

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 579

UNITED STATES LINES OPERATIONS, INC., PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The findings of fact (R. 24–66), conclusion of law (R. 67), and opinion of the Court of Claims (R. 67–72) are not yet officially reported..

JURISDICTION

The judgment of the Court of Claims was entered June 8, 1943 (R. 72). Petitioner filed a motion for a new trial on August 6, 1943, which was overruled on October 4, 1943 (R. 73). The petition for a writ of certiorari was filed January 4, 1944. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether the Court of Claims correctly interpreted a transportation contract between petitioner and the United States, as requiring that the prescribed discount for out-of-season sea voyages, admittedly applicable where both the eastbound and westbound passages occur out of season, must also be granted on the off-season half of round-trip voyages made half in and half out of season.

STATEMENT

The following facts, found by the court below, are relevant to the narrow question on which the petition is predicated, *viz,* the proper construction to be given the discount provision in petitioner's tariff:

The Act of March 2, 1929 (45 Stat. 1508)[1] authorized the Secretary of War "to arrange for pilgrimages to cemeteries in Europe" at the expense of the United States, by the mothers and widows of members of the armed forces who died in the last war and were interred abroad (R.24). The Secretary of War was authorized to investigate the probable cost of such pilgrimages and report thereon to Congress by December 15, 1929.

Pursuant to this authorization, officials in the Office of the Quartermaster General conferred with officers of petitioner with a view to ascer-

[1] The Act was amended on April 19, 1930 (46 Stat. 225), in particulars not here relevant.

taining the costs of such pilgrimages (R. 25). On June 19, 1929, petitioner wrote to the Quartermaster General concerning a proposed plan for the transportation of the mothers and widows, stating (R. 25–26):

> * * * from the standpoint of economy to the government * * * it would be much better if their transportation could be provided in what is termed the "off-season" when a 10% reduction is available. * * *
>
> If travel is one way in off-season and one way in height of the season, the 10% reduction is applicable on one-half of the fare.[2]

The 10% reduction on round-trip fares referred to in the letter was subsequently changed to 12% (R. 28). Negotiations continued, the Quartermaster General desiring more information as to the number of travellers before entering into any commitment (R. 28). Several other proposals, differing in particulars not here relevant, were submitted by petitioner (R. 28–31, 32–35, 38), culminating in an agreement of March 29, 1930

[2] During the years 1929 and 1930, petitioner was a member of the Trans-Atlantic Passenger Conference which had agreed in 1929 to institute as a trial "round-trip rates with a reduction of 10% from the combined one-way fares for travel" east-bound between August 16th and May 15th, and west-bound between October 16th and July 15th (R. 5, 19, 20, 53, 70, 86). Petitioner's letter of June 19, 1929, specified these dates as off-season, but the dates were subsequently altered somewhat (R. 53–54, 87–90).

(R. 43–48), accepted by the United States on April 9, 1930 (R. 48).

In that agreement, petitioner undertook to provide cabin-class accommodations on its vessels for transportation of mothers and widows "at tariff rates for the accommodations occupied east- and west-bound" (R. 43). The tariff rates referred to were those contained in a folder issued by petitioner, dated January 1, 1930, which was stated to cancel all previous issues (R. 53, 73–85). This folder set forth two sets of rates (both east- and westbound), one for the summer and one for the winter or "off-season" (R. 52), and provided in a footnote that "Round trip rates apply during 'off-season'—Eastbound, July 16th to May 15th, inclusive; Westbound, Oct. 1st to July 31st, inclusive. Round trip rate for berths above minimum is made by deducting 12% from combined Eastbound and Westbound fares" (R. 52, 76, 79, 81, 85).[3]

After several checks had been issued by the Government for the transportation of several groups of the Gold Star Mothers and Widows, calculated at the full fare amount for one-way travel, the finance officer of the War Department questioned the propriety of settling for the transportation without allowance being made, at the 12% discount rate provided in the tariff, for the trips made out of season, and requested that

[3] All the berths here involved were above the minimum.

petitioner correct the *per capita* fares on off-season sailings in accordance with its tariff (R. 56–57). When this was not done, the Government finance officer on October 27, 1930, notified petitioner that $77,908.26 was being deducted from its bills to cover the discount which should have been given (R. 66). This deduction was made up of $17,953.80, the discount on round-trip voyages made entirely out of season, and $59,954.46, the discount at 12% on the tariff rate for the off-season half of round-trip voyages made half in and half out of season.

Petitioner brought suit in the Court of Claims to recover the deduction (R. 1, 66). After a trial before a commissioner, and argument before the court below on exceptions to the commissioner's report, the court below held that under the terms of the contract and petitioner's tariff, the Government was entitled to the discount claimed and had never waived such right (R. 69–72). The petition seeks review solely of that part of the decision below which permits a discount on the out-of-season half of the voyages.[4]

ARGUMENT

Although the agreement involved was ambiguous, the Court of Claims properly held that the parties intended that the off-season discount should apply

[4] The petition states that the Government's right to a discount on voyages made entirely out of season is no longer questioned (Pet. 6).

to the off-season half of a round-trip voyage made half in and half out of season, as well as to the combined rates for voyages made wholly out of season. Furthermore, the question is peculiar to this case and is of no general importance; consequently, it does not warrant review by this Court.

1. The disputed provision in the 1930 tariff states that "Round trip rates apply during 'off-season'" and are "made by deducting 12% from combined Eastbound and Westbound fares." While this language is susceptible of being limited to voyages made wholly out of season, it does not necessarily exclude voyages of which half fall in off-season. And the circumstances surrounding the incorporation of that provision in the tariff make it plain that its application to the off-season half of the trip was proper. The Trans-Atlantic Conference of which petitioner was a member decided in 1929 to institute round-trip rates with a reduction of 10% from the combined one-way fares for travel during the off-season (R. 86), and its minutes provided that if the "passenger travels one way during the off season and one way during the summer season, the reduction of 10% will be allowed on the off season one-way fare" (R. 87). Likewise, petitioner's letter of June 19, 1929, the first step in the agreement of March 31, 1930, on which the instant suit is based, advised the Government that "If travel is one way in off-season and one

'way in height of the season, the 10% reduction is applicable on one-half of the fare" (R. 26). While both of these statements were made in reference to the 10% discount in effect in 1929, they are equally pertinent to the 12% discount offered in 1930, since the record shows that the only differences between the two discounts were their rate and the slightly different seasonal periods during which they applied (R. 85, 89). There is no support for petitioner's contention (Pet. 7, 9) that the 1930 tariff impliedly eliminated the discount on voyages made only partially out of season; such a change would scarcely have been left to implication, in the face of the Trans-Atlantic Conference minutes providing specifically for the availability of the reduction when the passenger traveled only one way during the off-season (R. 87).

Even conceding that the language of the 1930 tariff admits of the construction urged by petitioner, the square ambiguity created by the circumstances surrounding its promulgation must be resolved against the carrier, since tariffs susceptible of two meanings should be construed most favorably to the shipper. *United States* v. *Gulf Refining Co.*, 268 U. S. 542; *Atlantic Coast Line Railroad Co.* v. *Atlantic Bridge Co.*, 57 F. (2d) 654 (C. C. A. 5); *Union Wire Rope Corp.* v. *A. T. & S. F. Ry.*, 66 F. (2d) 965 (C. C. A. 8); *Chicago & Northwestern Ry. Co.* v. *Wilcox Co.*, 68 F. (2d) 883, 885 (C. C. A. 7). Indeed, the court

below considered that plaintiff had "admitted * * * that the term 'tariff rates' [as used in the agreement of March 29, 1930, between petitioner and the Government], without more, means the one-way fares shown on the [1930] tariff less the discount provided therein for 'off-season' travel" (R. 71).[5]

In any event, in the light of the negotiations preceding the contract for transportation, and the minutes of the Trans-Atlantic Conference at which the discounts were first authorized, it cannot be said that there is any clear and convincing evidence which requires a construction contrary to that given below. Cf. *Klamath Indians* v. *United States,* 296 U. S. 244, 252–253.

2. The conclusion of the court below is not open to attack on the ground that the construction given the disputed provision of the tariff was set forth in the opinion and not in the findings of fact (cf. Pet. 7). The interpretation of such a writing is a judicial rather than fact-finding function (*Hamilton* v. *Insurance Company,* 136 U. S. 242; *Great Northern Railway* v. *Merchants Elevator Company,* 259 U. S. 285, 290–291), and the opinion rather than the findings is an appropriate medium for expressing it. See *United States* v.

[5] The absence of detailed evidence as to the similarity between the 1929 and 1930 tariffs, results from the fact that there was no real dispute below as to this point, petitioner arguing in the main that the deductions provided for in the tariff were rendered inapplicable by the agreement between the parties.

Esnault-Pelterie, 299 U. S. 201, 205. Besides, the findings of fact are sufficient to compel a decision of the issue in favor of respondent (see Statement, *supra*). Cf. *United States* v. *Pugh,* 99 U. S. 265, 269; *Botany Mills* v. *United States,* 278 U. S. 282, 290; *United States* v. *Esnault-Pelterie, supra,* 206.

CONCLUSION

The decision below is correct. Moreover, the facts are unique, and no question of general importance is presented. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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U. S. GOVERNMENT PRINTING OFFICE: 1944